

-PS-O-

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JESUS H. GARCIA,

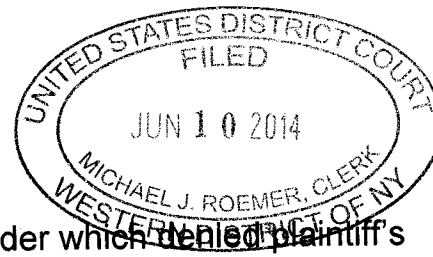
Plaintiff,

-v-

MYEARS, State Officer DOCS, SENDORSKY,
State Officer DOCS,

Defendants.

DECISION AND ORDER
13-CV-0965S



On February 7, 2014, the Court entered an Order which ~~denied~~ plaintiff's motion to proceed *in forma pauperis* on the basis that he had had three or more cases dismissed for "strike" reasons pursuant to 28 U.S.C. § 1915(e)(2)(B) and/or 1915A and had not established that he was in imminent danger of serious physical injury. See 28 U.S.C. § 1915(g) ("Three-Strikes Rule").¹ The Order also denied plaintiff's motion for appointment of counsel. Plaintiff was advised that if he did not pay the filing and administrative fees by April 17, 2014, his complaint would be dismissed. (Docket No. 7, Order.)

On March 13, 2014, the Clerk's Office entered a remark of the Docket Report indicating that the Order denying plaintiff's application to proceed *in forma*

¹An order of the Northern District of New York in a prior case filed by plaintiff noted that plaintiff had filed at least 18 other actions in the district courts within the Second Circuit and had been found previously to have garnered three strikes for purposes of § 1915(g). (Docket No. 7, Decision and Order (citing *Garcia v. Wheaton*, 13-CV-0608M, Docket Nos. 9, filed July 10, 2013 (N.D.N.Y.), Order Transferring Case, and 11, filed July 1, 2013 (W.D.N.Y.), Order Denying *In Forma Pauperis* Application).

pauperis pursuant to the three strikes rule was returned by the Southport Correctional Facility as "Undeliverable, Refused." The Court does not know if "Refused" means that plaintiff refused it or the Facility did because plaintiff may not have been housed there at that time. The Order had been forwarded to plaintiff at Southport, which had been noted on the Docket Report as plaintiff's current address. A letter from plaintiff, dated February 2, 2014, received February 6, 2014, and filed February 11, 2014, indicated that plaintiff was incarcerated at Southport. Two other submissions from plaintiff, both filed April 11, 2014, one seeking the appointment of counsel and one apparently seeking to compel discovery (Docket Nos. 8,9), also noted that plaintiff was incarcerated at Southport. Both these motions are denied without prejudice as premature. (See Docket No. 7, Order, at 4, n.2.)

Because the Court is not certain whether plaintiff received the Court's Order denying his application to proceed *in forma pauperis*,² the Court will direct the Clerk's Office to re-forward to plaintiff the Order denying his application to proceed *in forma pauperis* (Docket No. 7). If plaintiff does not pay the \$350.00 filing fee and \$50.00 administrative fee by **July 7, 2014**, the complaint will be dismissed without prejudice and without further order or notice to plaintiff.

²Plaintiff is advised that if he refuses to receive mail from the Court or opposing counsel in this action or others he has filed, see *Garcia v. Donohue*, 14-CV-0037S, his actions will be dismissed with prejudice.

IT IS HEREBY ORDERED that the Clerk of the Court is directed to re-forward to plaintiff the Order denying his application to proceed *in forma pauperis* (Docket No. 7);

FURTHER, that the complaint will be dismissed without prejudice without further order or notice to plaintiff unless plaintiff pays the full filing fee of \$350.00 and the administrative fee of \$50.00 by **July 7, 2014**; and

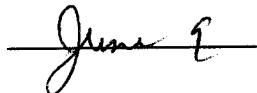
FURTHER, that plaintiff's motions for the appointment of counsel (Docket No. 8) and to compel discovery (Docket No. 9) are denied without prejudice.

IT IS SO ORDERED.

A handwritten signature in cursive script, appearing to read "Richard J. Arcara", is written over a horizontal line.

HON. RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

Dated:

 2014